The background of the top half of the page features a large, light blue watermark of the Seal of the State of Oregon. The seal is circular and contains an eagle with wings spread, a plow, a sheaf of wheat, and a banner that reads "THE UNION". The words "SEAL OF THE STATE OF OREGON" are written around the perimeter, and the year "1859" is at the bottom.

State of Oregon

Higher Education Coordinating Commission Needs to Address Weaknesses in Procurement Practices

December 2017

Secretary of State
Dennis Richardson

Audits Division, Director
Kip Memmott

Report 2017 – 28
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Higher Education Coordinating Commission Needs to Address Weaknesses in Procurement Practices

Report Highlights

The Secretary of State's Audits Division found that the Higher Education Coordinating Commission (HECC) state agency's current procurement practices are exposing the agency to legal, security, and public perception risks. Overall, HECC lacks an effective procurement system to ensure services and goods are procured in compliance with state laws.

Background

HECC is responsible for funding and coordinating public higher education in Oregon. It was established in 2011 as a volunteer commission to focus on strategic planning for public post-secondary education in the state. HECC's structure has expanded and now consists of an established state agency with 116 budgeted full time equivalent positions in eight offices.

Purpose

The purpose of this audit was to review procurement practices at HECC and identify opportunities to improve current practices.

Key Findings

Within the context that state procurement rules are complex and intended to benefit the state as a whole, we found that:

1. HECC leadership has not implemented a governance structure to ensure procurements are made in compliance with state laws and rules.
2. Of the 748 HECC contracts and agreements open from November 2016 to March 2017, 65% were executed after their effective date and 53 or 7% were considered backlogged.
3. A lack of clearly defined procurement roles and responsibilities and insufficient training has created confusion and inconsistent procurement processes and practices across the agency.
4. HECC current practices are noncompliant with state procurement laws and rules, exposing the agency to legal, security, and public perception risks.

To reach our findings we conducted interviews and reviewed agency documents, state procurement laws and rules, contract files and agreements, accounting records, and other accounting supporting documentation.

Recommendations

To establish and maintain a robust procurement process, we recommend HECC create a governance structure that clearly defines procurement roles and responsibilities and fully develop, implement, and train staff on procurement roles, policies, processes, and procedures. We also recommend HECC management ensure consistent adherence to state procurement laws and rules.

HECC leadership agrees with our findings and recommendations. Their response can be found at the end of the report.



About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of his office, Auditor of Public Accounts. The Audits Division performs this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division has constitutional authority to audit all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

Audit Team

Mary Wenger, CPA, Deputy Director

Kelly Olson, CPA, Audit Manager

Sarah Anderson, CPA, Principal Auditor

Katie Hull, Senior Auditor

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website: sos.oregon.gov/audits

phone: 503-986-2255

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255 Capitol Street NE, Suite 500
Salem, Oregon 97310

We sincerely appreciate the courtesies and cooperation extended by officials and employees of the Higher Education Coordinating Commission state agency during the course of this audit.



Higher Education Coordinating Commission Needs to Address Weaknesses in Procurement Practices

Introduction

The Higher Education Coordinating Commission (HECC) state agency should improve procurement practices. Overall, the agency lacks an effective procurement system to ensure services and goods are procured in compliance with state laws and rules.

Weaknesses in existing procurement practices are exposing the agency to legal, security, and public perception risks in their management of millions of dollars in contracts and services. From November 2016 through March 2017, HECC had 748 open contracts and agreements valued at approximately \$117 million.

HECC is responsible for coordinating higher education in Oregon

The Higher Education Coordinating Commission (HECC) is responsible for coordinating efforts between the state's public universities, community colleges, and workforce system to improve post-secondary education access and achievement for Oregonians. HECC is also responsible for administering state funding for higher education in Oregon.

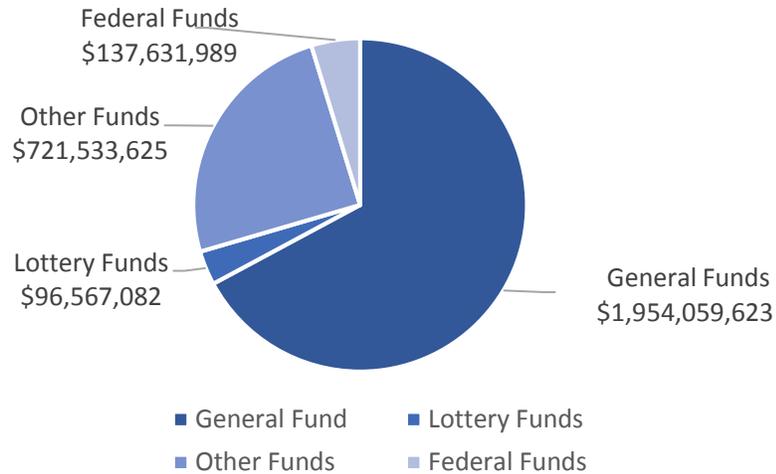
HECC's key functions include providing a strategic vision for Oregon higher education planning, funding, and policy; authorizing post-secondary programs and degrees; administering financial aid, workforce system, and other programs; and evaluating and reporting success of higher education efforts.

The Legislature originally established the commission in 2011 with limited authority and no funding. It was comprised of 15 members appointed by the Governor to primarily focus on strategic planning for the entire public and private post-secondary education system in the state. Additionally, the commission was charged with advising the Legislature, Governor, and Chief Education Office on higher education policy.

Over the past several years, the Legislature gave increased autonomy to public universities and significantly increased HECC's governance responsibilities. Legislation passed in 2013 expanded HECC's authority and provided funding for a HECC state agency, meaning that in a relatively short amount of time, HECC went from a volunteer member commission to a commission overseeing a state agency with 143 positions by 2015.

HECC receives funding from many sources to perform its responsibilities. As shown in Figure 1, HECC's recently approved 2017-2019 budget totaled about \$2.9 billion, with a large portion coming from the state General Fund.

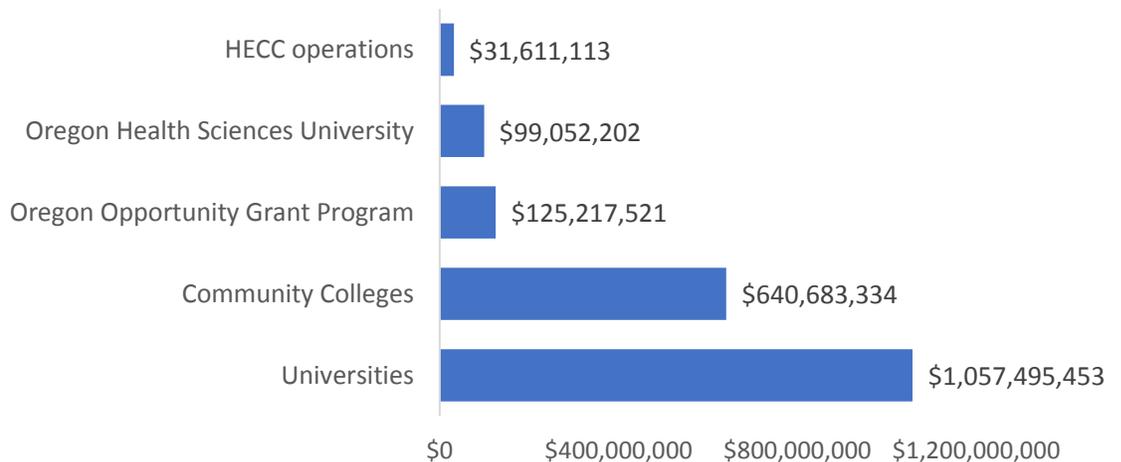
Figure 1: 2017-2019 Legislatively Approved Budget



Source: Legislative Fiscal Office, 2017-2019 Legislatively Adopted Budget Detailed Analysis.

About \$1.7 billion of HECC's General Fund monies is distributed to public universities and community colleges. To comply with state law,¹ HECC is required to have rules in place governing the distribution of these funds to public colleges and universities.

Figure 2: 2017-2019 Legislatively Approved General Fund Budget



Source: Legislative Fiscal Office, 2017-2019 Legislatively Adopted Budget Detailed Analysis.

¹ Oregon Revised Statute: 350.075(3)(f)

As of July 2017, HECC consists of 14 commission members who are supported by an executive director overseeing a budget that includes approximately 116 Full Time Equivalent (FTE) staff in eight offices. Some of the offices existed as independent state agencies prior to the legislative changes.

Figure 3: HECC Offices

Office of the Director, Policy, and Communication	Carries out central executive role of the agency
Office of Community Colleges and Workforce Development	Provides coordination and resources to Oregon’s 17 community colleges and 18 adult basic skills providers
Office of Student Access and Completion	Administers a variety of state, federal, and privately funded student financial aid programs
Office of University Coordination	Provides academic and fiscal coordination related to Oregon’s public universities
Office of Private Postsecondary Education	Oversees the quality, integrity, and diversity of private postsecondary programs in Oregon
Office of Workforce Investments	Provides oversight and resources for workforce development systems
Office of Research and Data	Collects, analyzes and reports research and data on post-secondary education to inform decisions
Office of Operations	Responsible for central services and operations including budget, procurement, payroll, and accounting

Source: HECC

Through its eight offices, HECC allocates a large portion of its budgeted \$1.9 billion of General Fund monies to universities and colleges.

Government procurement practices are established in laws and rules

Procurement refers to the act of purchasing, leasing, renting, or otherwise acquiring or selling supplies and services. Procurement also includes each procedure performed or required to enter into and administer a public contract.

State procurement is governed by a set of laws and rules administered through the Department of Administrative Services (DAS) and the Department of Justice (DOJ) with model rules and the use of mandatory and recommended templates for agreements and contracts.² State procurement is not limited to finding the fastest, least costly solution;

² Oregon Revised Statutes: 279A, 279B, and 291
Oregon Administrative Rule: Chapter 125, Divisions 246 and 247

rather, state purchases should be made to serve the broad, long term financial interests of Oregonians.

Agencies delegate procurement authority to Designated Procurement Officers

DAS delegates procurement authority to directors of state agencies on the condition that directors delegate such authority to Designated Procurement Officers, or DPOs. Each individual in the chain of delegation remains responsible for complying with procurement rules. A DPO is responsible for all delegated procurement activity on behalf of a state agency.

DPO's are expected to be familiar with procurement rules that apply to their agency and ensure their agency complies with applicable procurement requirements when procuring goods and services to carry out their agency's mission. They serve as a control to ensure goods and services are procured according to state laws and rules. To improve accountability, new procurement laws were created³ in 2015 and DAS created rules to implement the new laws. After December 31, 2018, any person conducting a procurement or administering a contract for a state agency must have education, training, professional experience or a combination thereof in accordance with the recent procurement laws and rules.

As specified in Oregon Administrative Rules,⁴ the authority, duties, and responsibilities of an agency's DPO include:

- Serving as the exclusive supervisor and manager of an agency's procurement system;
- Maintaining good contracting procedures and procuring supplies and services in compliance with public contract law and DAS rules and policies;
- Conducting, supervising and managing the procurement and procurement process of an agency;
- Preparing or monitoring the use of specifications or statements of work for all procurements; and
- Complying with reporting requirements of the Public Contract Code, and DAS procurement rules and policies.

DAS may revoke any delegation of procurement authority to a state agency for a variety of reasons including failure to comply with public contract law, with DAS procurement rules and policies, and with DAS training requirements.⁵

³ Oregon Revised Statute: 279A.159; Oregon Administrative Rule: 125-246-0140

⁴ Oregon Administrative Rule: 125-246-0170 (C)(b)

⁵ Oregon Administrative Rule: 125-246-0165

DAS rules set procurement thresholds

To procure supplies and services, agencies use personal service contracts, intergovernmental agreements, interagency agreements, grant agreements, and data sharing agreements, among other things. For procurement of personal services, regardless of the cost, agencies should have a contract in place prior to receiving the service that clearly specifies the deliverables, timelines, and costs.⁶ DAS has established rules for purchase thresholds that agencies are to comply with when procuring supplies and services.

Figure 4: DAS Rules Set Purchase Thresholds for Agency Compliance

Up to \$10,000	Small procurements of goods and services may be awarded without a competitive process.
\$10,000.01 to \$150,000	Intermediate procurements may be awarded after seeking three competitive price quotes or proposals. Typically, agencies request quotes for goods and proposals for services. The agency must keep a written record of the sources of the quotes and proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the agency must make a written record of the effort made to obtain the quotes or proposals.
More than \$150,000	Procurements exceeding \$150,000 may be awarded after seeking solicited competitive offers. An agency may solicit and award a public contract for goods or services by requesting and evaluating competitive sealed proposals or by competitive sealed bidding.

Source: Oregon Revised Statutes 279B.050 - .085

Additional requirements for price agreements and legal review

Price Agreements: DAS also negotiates and issues price agreements on behalf of all state agencies. The use of such agreements, which are public contracts for the procurement of goods and services at a set price, is often mandatory for agencies with DAS delegated authority.

For example, DAS has a mandatory use price agreement for office supplies. Agencies with DAS delegated purchasing authority must purchase office supplies using the price agreement rather than purchasing the supplies from other vendors.

Legal Sufficiency: State agencies are to comply with contracting rules that require agencies to submit contracts to DOJ before an agency publicly advertises a procurement of goods or services. DOJ attorneys review the contracts to ensure the contracts are legally sufficient.

The law requires DOJ to approve for legal sufficiency, all personal service contracts, all architectural and engineering service contracts, and all information technology contracts calling for payment in excess of \$75,000. DOJ must approve these contracts before they become binding on the state and before any service may be performed or payment made. Other

⁶ Oregon Administrative Rule: 125-246-0345

contracts in excess of \$100,000 must be submitted to DOJ for review and approval. By rule, DOJ consolidates these thresholds so that all contracts in excess of \$150,000 require approval for legal sufficiency.

Procurement rules are intended to ensure prudent use of state monies, equity and fairness for contract awards, and promote public confidence and transparency

The state's procurement laws and rules aim to serve multiple purposes, including the following:

- Simplify, clarify, and modernize procurement practices to reflect the marketplace and industry standards;
- Instill public confidence through ethical and fair dealing and good faith on the part of government officials and those who do business with the government;
- Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within the state;
- Clearly identify rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds;
- Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement; and
- Provide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts.

HECC's significant procurement portfolio managed by a small procurement team

HECC has a centralized procurement unit consisting of one manager who is the DPO, and one full-time procurement specialist. Staff from the various HECC offices also participate in some procurement activities. Prior to 2016, some procurements were tracked by individual HECC offices. Since then, the procurement unit has started tracking all procurements they were aware of to better manage and determine the number and types of procurements.

HECC management stated the procurement office has maintained a contracts and agreements log since early 2016 to track the current status of all contracts and agreements.

Using the log as of March 2017, we summarized the data by contract and agreement categories and determined that from November 2016 through March 2017, HECC conducted 748 procurements valued at \$117 million.

Figure 5: List of HECC Procurements as of March 2017

Contract	Number	Amount
Work Order	10	574,133
Interagency	32	7,229,690
Intergovernmental	34	767,402
Personal Services	51	2,306,015
Total	127	\$10,877,240
Agreement	Number	Amount
Data Sharing	82	9,320
Grant	406	61,469,963
Total	488	\$61,479,283
Purchase Order	Number	Amount
	29	241,166
Not Complete	Number	Amount
	104	44,902,249
Total	748	\$117,499,938

Source: HECC procurement office log of contracts and agreements

HECC has delegated authority from DAS to complete its own procurements up to \$150,000. For procurements exceeding this amount, HECC must obtain special permission from DAS or must have DAS conduct the procurement.

Due to HECC’s responsibilities and the pass-through nature of their business, most of their procurements are agreements with local governments, such as community colleges and school districts, and business partners, such as scholarship foundations or workforce boards.

Two of HECC’s offices, Workforce Development and Student Access and Completion, account for the majority of the procurement demand. Typical procurement needs include agreements for disbursement of grant or scholarship funds or contracts for services obtained.

Objective, Scope and Methodology

Objective

Our audit objective was to review HECC procurement practices and identify opportunities for improvement.

Scope

The audit focused on procurement processes. We reviewed procurement practices in place from July 2015, through May 2017. During the course of the audit, we found that there are no statewide metrics for what type or

how many procurements a typical procurement unit should be able to manage effectively.

Methodology

To address our objective, we used a multi-faceted methodology that included, but was not limited to, conducting interviews, reviewing documentation, and analyzing procurement data.

We conducted interviews with HECC personnel responsible for establishing and managing HECC procurement. We interviewed executive management, including the director and deputy director, analysts, division managers, and procurement staff.

In addition to interviews, we reviewed state procurement rules and regulations and reviewed contract files and agreements, accounting records, and other accounting supporting documentation. We also surveyed other agencies to gain an understanding of procurement staffing levels and procurements completed during the year.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained and reported provides a reasonable basis to achieve our audit objective.

Audit Results: Higher Education Coordinating Commission Needs to Address Weaknesses in Procurement Practices

HECC lacks a robust and effective procurement system to ensure services and goods are procured in accordance with state procurement laws and rules.

HECC is responsible for the distribution of funds to higher education and for coordinating efforts between the state's higher education entities to improve education access and achievement. It also disburses a significant amount to local governments and other entities using contracts and agreements. HECC's noncompliance with procurement laws and rules exposes the state to financial, legal, and public relations risks.

HECC lacks a robust and transparent process for procuring services

HECC needs to adhere to effective and compliant procurement practices to ensure proper stewardship of state monies. Establishing and maintaining a sound procurement process is especially important as HECC disburses large amounts of public monies through procurements.

However, HECC currently lacks such a process and there is confusion within HECC about who should procure goods and services and how procurement should occur, resulting in inconsistent practices and noncompliance with state laws and rules.

HECC procurement practices are noncompliant with state laws and rules

We noted several instances of noncompliance with procurement laws and rules. Compliance with public contracting laws is required by statute and rule.⁷ Noncompliance puts the agency's reputation and delegated contracting authority at risk. According to HECC management, upon its formation as a state agency in 2014-15, HECC inherited a large number of contracts and agreements from its predecessor agencies that did not comply with state laws and rules.

Services obtained without a fully executed contract

From November 2016 through March 2017, HECC executed 644 procurements, primarily consisting of agreements and contracts, with another 104 pending procurements. Of the 748 total procurements during this timeframe, approximately 65% were executed after the effective date of the contract or agreement, meaning some of the funds were disbursed or work began before there was a valid contract or agreement in place. According to HECC management, this large volume of procurement work was due in part to the lack of appropriate attention to procurement

⁷ Oregon Administrative Rule: 125-246-0130 (1)

requirements at HECC's predecessor agencies, as well as a long period of vacant procurement positions at the HECC agency's outset.

In one instance, services were obtained without a contract. Agency management purchased training services without involving the DPO, resulting in these services being rendered without a contract, which is noncompliant with state rules. For these services, HECC management provided conflicting direction to staff on how to acquire and pay for the services.

For personal service procurements, regardless of the cost, agencies should always have a contract in place before receiving the service. The contract should clearly specify the deliverables, timelines, and costs. Purchasing rules are complex. Having a consistent process and funneling procurements through the DPO, who has the delegated purchasing authority and knowledge of rules, could help ensure procurements are made in accordance with state laws and rules, in addition to being a more effective process.

Contracts executed without adhering to competitive bid or legal sufficiency requirements

Audit work also identified instances where procurements did not comply with competitive bid requirements. For example, a contract for technology services was not procured through the competitive bid process in accordance with DAS rules. Per DAS, a technology contract for \$100,000 requires a minimum of three bids. However, the agency bypassed the bid process and directly awarded the contract to a vendor for \$100,000.

The DPO became aware of the situation prior to the signing of the contract and requested approval for a special procurement from DAS, which was denied because it did not meet the criteria for such an exception. Based on this denial, the agency quickly sought the required three bids before entering into a contract with a vendor.

The DPO stated that in instances where management and agency staff have initiated procurement without going through the procurement unit, once aware of the situation, the DPO either stops the services prior to delivery or documents contracting considerations after the fact noting the noncompliance and the cause.

Contracts for personal services in excess of \$150,000 are required to be submitted to DOJ for legal sufficiency. Additionally, allocating grant funds to external entities and schools requires a written agreement regardless of the grant amount. However, HECC has been using a process from one of its predecessor agencies that involves sending one-page letters rather than written agreements to grant Title II funds, which is non-compliant with procurement requirements. From July 2015 through March 2017 about

\$6 million in Title II funds were distributed using letters rather than agreements.

As a result, HECC is in the process of ratifying agreements for all Title II funds distributed in Fiscal Year 2017 to bring the agreements into compliance, meaning agreements over \$150,000 are being reviewed and approved for legal sufficiency after the transactions have taken place. By not seeking DOJ review when required, HECC is exposing the state to legal risks.

In another example, several current scholarship contracts are outdated, do not contain the required state clauses, and have not been submitted to DOJ for review. State procurement laws and rules require that all scholarship agreements be updated, use a specified template, and undergo a DOJ review. According to HECC, this is another example of a long-standing process inherited from a predecessor agency that needs to be updated.

HECC not always using state price agreements

In all state agencies surveyed, we found they made small procurements of goods and services through their procurement unit. However, at HECC, purchases under \$10,000 do not always involve the procurement unit.

Often, small purchases are made through the use of state-authorized credit cards, known as SPOTS.⁸ We reviewed SPOTS transactions and found several instances where goods should have been purchased using the state's mandated use price agreements, rather than purchasing the goods or services from other vendors. For example, we found instances where HECC staff purchased computer hardware and standing work stations using SPOTS cards and not a mandated price agreement.

HECC not overseeing the use of end user IT agreements

Small information technology purchases, such as services or software, typically come with end user agreements requiring the user to accept the terms and conditions of using the service or software. Imbedded within end user agreements may be provisions that allow the vendor to collect, store, and use data.

When these purchases are made without the knowledge or guidance of the procurement unit, there is no assurance that end user level agreements are being thoroughly reviewed for implications to the state.

⁸ SPOTS stands for State Purchasing Card of Oregon Transaction System and is a credit card program.

HECC has a significant procurement backlog exacerbated by inconsistent practices and poor communications across the agency

The lack of a supported and centralized process for procuring services has resulted in a significant procurement backlog and procurement needs being communicated late, causing reactive responses.

As of mid-March 2017, 104 contracts and agreements out of a total of 748 were not complete. Of that amount, 53 contracts and agreements, totaling \$36.7 million, are considered backlogged. These 53 items will be retroactively executed — that is, the contract or agreement will be in place after goods and services have been provided.

In other instances, HECC made late, inaccurate and/or duplicate payments to vendors due to poor contract administration within the agency. In the case of duplicate payments, accounting staff subsequently identified and corrected these issues. In one instance, a contract was amended 23 times over the last several years, requiring one contract ratification and two reinstatements. The total spent through March 2016 on this contract is \$2.4 million. The ratification and reinstatements were due to exceeding the contract limit and timelines and not timely obtaining the necessary legal sufficiency review.⁹

Several factors contribute to HECC procurement weaknesses

According to the HECC DPO, although the procurement unit is making efforts to inform and educate agency management and staff about appropriate procurement processes, the unit is sometimes seen more as a barrier to procuring goods and services and even circumvented at times.

Further, HECC agency leadership has not provided sufficient direction and support to the agency DPO. When agency staff and management do not contact the procurement unit to make purchases, it inhibits the unit's ability to timely meet the needs of the agency.

Managing procurement practices and complying with state procurement rules are not priorities

It is a management function to develop and implement processes to ensure the operational success of an agency, including its support. When management sees the state's procurement laws and rules as a barrier to meeting its mission and strategic goals, the tone filters down through the rest of the agency. The inadequate support for procurement functions within HECC has allowed roles, responsibilities, and workflow processes to remain largely undeveloped and inconsistent.

⁹ Ratification of a contract occurs when an agency seeks DOJ's legal sufficiency review after a contract is in place rather than before the contract is executed as required by state law. Reinstatement of a contract occurs when an agency needs DOJ's approval to reinstate a contract that the agency inadvertently allowed to expire.

Agency leadership has addressed many priorities since the creation of the agency but has not provided the governance structure necessary to ensure compliance with procurement requirements. This lack of governance results in unclear roles and responsibilities and poor internal communication and coordination between HECC offices. When roles and responsibilities are unclear, procurements are made by staff not properly trained in procurement law, leading to noncompliance.

The manner in which government conducts procurement also affects the public's trust. Transparent, fair and equitable, and consistent procurement practices encourage the public's good will and trust that agencies will wisely spend the public's money.

State procurement professionals need executive level backing and support for decisions. HECC's procurement unit is much more effective when allowed to contribute expertise at critical decision making points early in the process. The point when procurement officials become involved is directly correlated to the success and compliance of the procurements.

Lack of policies and procedures lead to unclear expectations

Without the necessary policies and procedures in place, agency management and staff are unclear where their roles and responsibilities start and stop. The intersection between the procurement unit and the procurement needs within the business offices in the agency are undefined. This lack of clear processes and boundaries has led to noncompliance with laws and rules and contributed to the backlog.

The DPO drafted and submitted to leadership policies and procedures for review and implementation in August 2016. As of May 2017, they still had yet to be considered. This is not unusual for the agency, which relies primarily on DAS statewide policies to govern agency practices. According to HECC employees, there are almost no HECC-specific policies and procedures developed for the agency in any area and the process for developing and implementing policies and procedures within the agency is unclear.

A lack of documentation of policies and procedures results in unclear expectations and noncompliance with procurement requirements. This is particularly challenging with HECC since it absorbed agencies that had their own procurement processes before being merged into HECC. These differing approaches may not have been in alignment with current laws and rules and continue in HECC because clear policies, procedures, and workflow processes have not been systematically developed and instituted.

Lack of procurement training puts the agency at risk of noncompliance

In addition to unclear roles and responsibilities, poor training efforts have continued to limit HECC's procurement unit from efficiently processing procurement requests and working through the backlog of needed procurements.

With the exception of one 30-minute-long introduction to procurement law at an all-staff meeting in September 2016, there has been no formal training provided by management. As procurement issues arise, the DPO has conversations with the staff or management involved in an effort to bring awareness to procurement laws and rules.

Several staff interviewed during the course of the audit mentioned that more training is necessary to fully understand HECC's procurement processes and their role and responsibility in procurement. Several stated that training on policies, processes, procedures, contract administration, and their expected role and responsibilities in procurement would be helpful to clear up confusion, resulting in more compliance with procurement requirements.

HECC procurement weaknesses pose risk to the state

HECC annually disburses millions of dollars using contracts and agreements. Procurement policies and processes are used to ensure effective, fair, and equitable contracts and agreements are executed for goods and services. By failing to consistently comply with procurement laws and rules, HECC is exposing the state to risks.

A loss to professional reputation can occur when HECC does not execute procurements timely and in an expected manner. This also exposes the agency and the state to legal risks associated with possible breach of legislation or contractual noncompliance. Financial risks can occur with a failure to secure the most economical advantageous outcome for the state.

Although at times it may seem that the procurement laws and rules are burdensome, they were created for intended purposes. One of which is to ensure that contracts for services consider applicable security risks.

By not having adequate policies and procedures in place that are consistently followed, HECC and entities receiving services through HECC are exposed to security risks. For example, when purchasing technology services or contracting for services involving personal data, it is important to ensure contracts are submitted to DOJ for legal sufficiency to ensure they adequately protect data and address confidentiality and public disclosure laws.

HECC also runs the risk of damaging partnerships when vendors and business partners encounter significant delays in receiving payments. HECC's loss of credibility due to continued delay in payments or disbursements may deter business partners from work or collaboration with HECC in the future, making strategic goals and operational mandates difficult to achieve.

To maintain its delegated authority, HECC and its director must maintain good procurement practices in compliance with laws and rules. If HECC

does not maintain good procurement practices, the Chief Procurement Office for the state may revoke HECC's procurement authority.

DAS may revoke HECC's authority due to: 1) failure to comply with procurement regulations, 2) deficiencies evidenced by performance audits, such as this audit, 3) noncompliance with DAS training requirements, and 4) not obtaining adequate experience in procurement knowledge. If the agency's procurement authority is revoked, HECC would have to procure goods and services through DAS at a significant cost to HECC.

Managing procurement practices and complying with state procurement rules should be a high priority for HECC

The primary role of public procurement is to obtain quality goods and services to support effective and efficient government ensuring the prudent use of public funds. To do this, procurement officials must have a voice in the procurement governance structure to ensure compliance with state procurement laws and rules.

HECC management should rely on their procurement staff to be the professional guides. Incorporating procurement considerations at the onset of agency projects ensures procurement strategies are aligned with organizational goals and enables proactive actions to maximize efficiency and effectiveness through timely planning.

HECC's procurement function must be provided adequate resources and accurate information to leverage the procurement unit's expertise and experience in order to achieve sustainable, transparent, and compliant procurement processes.

Recommendations

We offer the following recommendations to assist HECC with efforts to establish and maintain a robust procurement process. We recommend that HECC:

1. Immediately address the backlog of procurement contracts and agreements.
2. Leadership implement a governance structure that clearly defines procurement roles and responsibilities including the role of the Designated Procurement Officer, the procurement office, and all HECC offices acquiring goods and services. The governance structure should address noncompliance, including actions to take when noncompliance is identified.
3. Align with state procurement practices and fully develop and implement procurement policies, processes, and procedures. HECC management should disseminate implemented policies and procedures in a systematic way to ensure unified messaging.
4. Fully develop and provide periodic training to staff on
 - (1) procurement roles and responsibilities;
 - (2) procurement policies, processes, and procedures; and
 - (3) contract administration.
5. Assess current and ongoing procurement needs and make adjustments to procurement resources as needed.



Oregon

Kate Brown, Governor

Higher Education Coordinating Commission

255 Capitol Street NE, Third Floor

Salem, OR 97310

www.oregon.gov/HigherEd

December 11, 2017

Kip Memmott, Director
Secretary of State, Audits Division
255 Capitol St. NE, Suite 500
Salem, OR 97310

Dear Mr. Memmott,

This letter provides a written response to the Audits Division's final draft audit report titled, "Higher Education Coordinating Commission Needs to Address Weaknesses in Procurement Practices."

HECC leadership appreciates the time and careful attention that the Audits Division paid to the agency's procurement practices. While we began to recognize weaknesses in the agency's procurement practices nearly two years ago, the audit reinforces our understanding of those deficiencies and our commitment to addressing them. We fully accept the audit's recommendations, many of which we have either adopted already or are in the process of implementing (see below).

As the audit notes, the HECC is a relatively new agency that was formed in 2014-15 from the merger of pre-existing, stand-alone agencies including the Office of Student Access and Completion (OSAC), the Department of Community Colleges and Workforce Development (CCWD), and portions of the Oregon University System (OUS). Since 2014-15, we have simultaneously merged the business processes of our predecessor agencies – itself a complex endeavor that we have undertaken without additional resources dedicated to this task – and upgraded our practices to meet state requirements and our agency's needs. We have taken significant strides in this regard, including through the centralization and overhaul of our accounting, budget, human resources, and information technology operations.

Procurement, however, has remained an especially persistent challenge for the agency. From CCWD, OSAC, OUS, and other predecessor entities we inherited responsibility for administering over \$2 billion of funding biennially through hundreds of grants, contracts, and other agreements. At the same time, we inherited just two permanent procurement positions and have been unsuccessful with our budget requests for additional procurement positions. Despite having one of the state's largest and most complex budgets, we have no internal auditor and were unsuccessful in our requests to fund this position during the 2015 and 2017 legislative sessions. Moreover, we inherited from our predecessor agencies specific agreements, processes, and practices that were not compliant with state standards and/or the HECC's needs as a larger agency. CCWD and OSAC in particular (the two predecessor agencies responsible for the majority of the HECC's procurement activity) bequeathed to HECC dozens of non-standard agreements and, just as significantly, staff who had been inadequately or inaccurately trained about the procurement process and requirements.

The audit correctly notes that as of spring, 2017 the agency had not meaningfully addressed fundamental issues of training, policies, and procedures. Management had decided, perhaps mistakenly, to focus instead on addressing the extraordinary backlog of agreements that required execution during the last months of the 2015-17 biennium in order to meet the funding expectations of partners including



the federal government, local grant recipients, and state legislators. Virtually all of our procurement capacity and energy was focused on getting agreements out the door, instead of on dealing with the underlying issues that had created some of the challenge in the first place. While that decision supported our ability to complete the work assigned to us and our partners during the 2015-17 biennium, it also allowed procurement problems to perpetuate within the agency longer than they might have otherwise.

Since the audit was conducted last spring, the agency has been able to make significant strides in reducing the backlog and beginning to address underlying issues. Where the audit notes 53 contracts and agreements that were backlogged in spring, 2017, we had reduced this number to 5 by early December. Where the audit notes an absence of policies and procedures to govern our procurement practices, the agency has since adopted procurement policies and procedures and is in the process of implementing those out across the agency.

Despite losing five FTE in our 2017-19 budget, we have permanently reallocated two FTE to enhance our procurement capacity, and we have developed new training for all relevant staff which will be rolled out over the next three months. For 2018, we have again requested legislative funding for an internal auditor, a position that is critical for the agency to better anticipate and correct these types of operational deficiencies.

Agency leadership takes very seriously the risks associated with any failure to follow the letter and spirit of the state’s procurement requirements. Non-compliance with state requirements is unacceptable. The agency’s official expectation, as reflected in our procurement policies, is that we will reduce the number of agreements that require ratification to zero, and that we will not exceed two reinstatements per year. Failure by any employee trained to comply with the agency’s procurement policies may result in disciplinary action, up to and including dismissal.

We believe that we have made significant progress towards rectifying the issues raised by the audit, even as we have major work still to do. Below, we detail our response to each recommendation in the audit, including our timelines for fully implementing those recommendations.

RECOMMENDATION 1		
Immediately address the backlog of procurement contracts and agreements		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 6 months)	Name and phone number of specific point of contact for implementation
Agree	Currently largely caught up. Items backlogged are awaiting DOJ resolution.	David Zerbe 503.947.2436 Holley Oglesby 503.947.2449



Narrative for Recommendation 1

During the last six months of fiscal year 2017 the agency added additional staff in the form of job rotations and work-out-of-class assignments to address the backlog. The backlog, identified as 53 in the audit, has been reduced to five. Future backlogs will be avoided through adequate staffing and appropriate staff training.

RECOMMENDATION 2		
Leadership implement a governance structure that clearly defines procurement roles and responsibilities including the role of the Designated Procurement Officer, the procurement office, and all HECC offices acquiring goods and services. The governance structure should address noncompliance, including actions to take when noncompliance is identified.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 6 months)	Name and phone number of specific point of contact for implementation
Agree	Completed	Bob Brew 503.947.8541

Narrative for Recommendation 2

The executive leadership of the HECC has instituted agency-specific procurement policies and procedures that clearly outline the roles and responsibilities of specific HECC employees vis-a-vis contract and agreement development and administration, and the purchase of other goods and services. The policies further specify that appropriate and comprehensive training shall be provided to agency staff and, following training, staff shall be held accountable for following procurement protocols. Failure to follow procurement protocols may lead to disciplinary action up to and including termination.

Additionally, a series of regular meetings between the Designated Procurement Officer and the Executive Director/Deputy Executive Director has been established to clear communication and facilitate proactive problem solving.

RECOMMENDATION 3



Align with state procurement practices and fully develop and implement procurement policies, processes, and procedures. HECC management should disseminate implemented policies procedures in a systematic way to ensure unified messaging.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 6 months)	Name and phone number of specific point of contact for implementation
Agree	Within the next two months	Holley Oglesby 503.947.2449

Narrative for Recommendation 3

Since the audit was conducted, the agency approved procurement policies that align with state requirements. Agency leadership has adopted associated internal procurement procedures, which will be rolled out through appropriate and comprehensive training to agency staff by March, 2018.

RECOMMENDATION 4		
Fully develop and provide periodic training to staff on (1) procurement roles and responsibilities; (2) procurement policies, processes, and procedures; and (3) contract administration.		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 6 months)	Name and phone number of specific point of contact for implementation
Agree	Training will be rolled out in December, January and February.	Holley Oglesby 503.947.2449

Narrative for Recommendation 4

Comprehensive training has been developed for contract administrators and management along with a general introduction to all staff on procurement. This will be rolled out with the DAS procurement training starting this month.

RECOMMENDATION 5



Assess current and ongoing procurement needs and make adjustments to procurement resources as needed		
Agree or Disagree with Recommendation	Target date to complete implementation activities (Generally expected within 6 months)	Name and phone number of specific point of contact for implementation
Agree	Hiring of 2 permanent staff over the next 3 months.	David Zerbe 503.947.2436 Holley Oglesby 503.947.2449

Narrative for Recommendation 5

The HECC's Office of Operations has reallocated two permanent staff positions to procurement, creating a Procurement Specialist 3 and a Procurement Assistant to permanently address the need. The Procurement Specialist 3 is currently in the final stages of recruitment and the Assistant has just started the recruitment process.

Please contact Bob Brew, Deputy Executive Director, at 503.947.8541 with any questions.

Sincerely,

Ben Cannon
Executive Director
Higher Education Coordinating Commission

Neil Bryant
Chair
Higher Education Coordinating Commission